

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ROBERT E. STEPHENS

COMPLAINANT

v.

HIGHLAND COMMUNICATIONS OF
TENNESSEE AND HIGHLAND
TELEPHONE COOPERATIVE, INC.

DEFENDANTS

CASE NO. 97-145

O R D E R

IT IS HEREBY ORDERED that Highland Telephone Cooperative, Inc. ("Highland Telephone") shall file the original and six (6) copies of the following information with the Commission with a copy to Complainant by no later than 14 days from the date of this Order:

1. Provide the Internal Revenue Code section number which permits establishment of a for-profit subsidiary by a non-profit organization.
2. Has Highland Telephone shifted any of its activities to Highland Communications? If yes, explain in detail.
3. Does Highland Telephone have any plans to shift any of its income-producing activities to Highland Communications? If yes, explain in detail.
4. Explain in detail how Highland Communications' revenues and profits will benefit Highland Telephone's membership?
 - a. How is Highland Communications funded?

b. Will Highland Communications' profits flow back to Highland Telephone? If yes, state how this transaction will be recorded in Highland Telephone's books? If no, explain.

5. Describe Highland Communications' current activities and sources of revenue. Include a discussion of its future plans.

6. Provide supporting documentation for Highland Telephone's claim that "[t]he concern of telephone cooperatives across the nation was that if they simply continued business as before, then outside carriers and long distance companies would gradually take over many of the traditional telephone services previously provided by the Cooperative."

a. Identify specifically the "traditional services" and revenue streams of Highland Telephone that it claims are at risk.

7. Explain how establishment of Highland Communications provides the best protection for the investments and revenue of Highland Telephone's membership.

8. Describe the extent of Highland Telephone's control over Highland Communications.

9. By establishing Highland Communications, will Highland Telephone construct, purchase, lease as lessee, take, receive, or otherwise acquire, improve, expand, install, equip, maintain, or operate any telephone lines, facilities or system, lands, buildings, structures, plants and equipment, exchanges, or any other real or personal property, tangible or intangible, within the boundaries of any incorporated or

unincorporated city, town, village, or borough within Kentucky having a population in excess of one thousand five hundred (1,500) inhabitants?

- a. If yes, has Highland Telephone obtained the authority to do so?

Provide supporting documentation.

- b. Will Highland Communications engage in any of the enumerated activities?

10. Explain the necessity, convenience and appropriateness of Highland Telephone's establishment of Highland Communications to accomplish the purpose for which Highland Telephone was organized, which, according to Highland Telephone's response to the Commission's June 11, 1997 Order, is "to furnish, improve, and expand telephone service to its membership." [Emphasis added.]

11. Could Highland Telephone have offered long-distance services to its membership without establishing a separate subsidiary? Explain fully and provide supporting documentation, where appropriate.

12. Explain how establishment of Highland Communications provides Highland Telephone the best protection from competition.

13. Provide supporting documentation for Highland Telephone's claim that "[e]very source consulted recommended that Highland Telephone Cooperative establish a for-profit subsidiary."

14. Provide a copy of the Internal Revenue Service's 1991 Technical Advice Memorandum that is referenced in Highland Telephone's response to the Commission's June 11, 1997 Order.

15. Provide supporting documentation for Highland Telephone's claim that "every source consulted recommended the establishment of a for-profit subsidiary as the safest method to protect Highland Telephone's tax-exempt status."

16. Explain how establishment of Highland Communications of Tennessee will protect Highland Telephone from losing its tax exempt status.

a. Will the provision of toll service to Highland Telephone's members help Highland Telephone enhance its position relative to the "85% test"? Explain.

b. Explain why the provision of toll service by Highland Telephone to its members would not enhance its position relative to the 85% test. Wouldn't the toll revenue received increase total revenues and therefore decrease billing and collection revenues as a percentage of all revenues? If no, why not?

c. Does Highland Telephone intend to move its billing and collections functions from the local exchange carrier to Highland Communications? If yes, would such a move put upward pressure on local rates? If no, explain.

17. Highland Telephone's 1996 annual report reflects \$5.2 million in cash and securities.

a. What source generated this cash and investments?

b. Does this accumulation of cash and investments endanger Highland Telephone's nonprofit status relative to federal or state law, including income tax regulation? If no, explain why not.

c. As a cooperative, is Highland Telephone required to return to its members all revenues which exceed expenses? If yes, why has it been able to accumulate this cash and investments?

18. Does Highland Telephone's capital (equity and debt) exceed its net plant balance by approximately \$7.0 million? If yes, does this excess provide support for the investments that are discussed in Question 17(a) of this order? Does it provide support for the improvement of telephone plant? Explain why or why not.

19. Did Highland Telephone petition the Commission for authorization to establish Highland Communications? If, yes, provide supporting documentation. If no, explain.

20. Does Highland Telephone anticipate petitioning the Commission for authorization to transfer its billing and collection functions? If yes, when?

21. Do Highland Telephone's bylaws or its contracts with members and patrons contain provisions relative to the disposition of revenue and receipts? If no, explain. If yes, provide supporting documentation.

22. Did Highland Telephone obtain the affirmative vote of not less than two-thirds (2/3) of its member prior to the establishment of Highland Communications? If no, explain. If yes, provide supporting documentation.

Done at Frankfort, Kentucky, this 30th day of July, 1997.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:


Executive Director